

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

) CA:
BARBARA MIKELL,)
)
PLAINTIFF,)
)
)
v.)
)
WEN JAI RESTAURANT GROUP, LLC,)
d/b/a WENDY'S, WENDY'S)
INTERNATIONAL, LLC, and)
QUALIFIED BUILDERS INC.)
)
DEFENDANTS.)
)

)

The Plaintiff, complaining of the above-named Defendants, alleges and would respectfully show unto this honorable Court as follows:

1. The Plaintiff Barbara Mikell is a citizen and resident of the County of Charleston, State of South Carolina.

2. That, upon information and belief, the Defendant Wen Jai Restaurant Group, LLC (hereinafter "Wendy's") is at all times relevant hereto a foreign corporation organized under the laws of the State of Florida and conducting business in the County of Charleston, South Carolina, including the operation of its Wendy's fast-food restaurant located at 361 Johnnie Dodds Boulevard, Mount Pleasant, South Carolina 29464 as or through itself and/or a subsidiary, successor, or other corporation or entity.

3. That, upon information and belief, the Defendant Wendy's International, LLC (hereinafter "Wendy's International") is at all times relevant hereto a foreign corporation organized

under the laws of the State of Ohio and conducting business in the County of Charleston, South Carolina, including the operation of its Wendy's fast-food restaurant located at 361 Johnnie Dodds Boulevard, Mount Pleasant, South Carolina 29464 as or through itself and/or a subsidiary, successor, or other corporation or entity.

4. Upon information and belief, Defendant Qualified Builders, Inc. is at all times relevant hereto a foreign corporation organized under the laws of the State of North Carolina and conducting business in the County of Charleston, South Carolina, including the construction and renovation of the Wendy's restaurant located at 361 Johnnie Dodds Boulevard, Mount Pleasant, South Carolina 29464 as or through itself and/or a subsidiary, successor, or other corporation or entity.
5. The events hereinafter described occurred in Charleston County, South Carolina.

JURISDICTION AND VENUE

6. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1332. Complete diversity of jurisdiction exists between the parties and the amount in controversy exceeds seventy-five thousand (\$75,000.00) dollars.
7. The acts complained of herein were committed, or had their principal effect, within the District of South Carolina, and, therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE)

8. The Plaintiff hereby repeats and realleges the allegations contained in each and every paragraph above as if repeated verbatim herein.
9. That on or about November 11, 2121, the Plaintiff was a business invitee entering the Wendy's restaurant located at 361 Johnnie Dodds Boulevard in Mount Pleasant, South Carolina, owned and operated by Defendant Wendy's and franchised by Defendant Wendy's International.
10. That the Plaintiff tripped and fell on the threshold of the restaurant's entrance, forcefully landing on her right side on the stone-tiled floor, causing painful and permanent injury to the Plaintiff.
11. That the threshold at the enterance, installed and repaired by Defendant Qualified Builders was damaged, defective, and not up to code.
12. That the Defendants, by and through their agents or employees, are guilty of one or more of the following acts of negligence, recklessness, and gross negligence, which proximately caused the incident and Plaintiffs resulting injuries:

- (a) In failing to keep the restaurant's entry way in a reasonably safe condition free from any hazards;
- (b) In creating, maintaining, and allowing to exist an unreasonably hazardous and dangerous condition on the grounds in general and to the Plaintiff in particular;
- (c) In failing to properly inspect and maintain the area where Plaintiff fell so as to discover and correct the dangerous condition;
- (d) In failing to properly train, instruct and supervise its employees in the proper and safe inspection and maintenance of the area where Plaintiff fell;
- (e) In permitting the threshold where Plaintiff fell to be in and remain in an unsafe and hazardous condition after notice of its hazardous and unsafe condition;
- (f) In failing to follow its own policies and procedures for inspecting and maintaining the threshold and public right of way;
- (g) In failing to adequately assess the potential for an accident or injury and in failing to take action to avoid such outcome in the event such possibility was determined; and

- (h) In generally failing to exercise the degree of care and caution that an ordinary, reasonably prudent person would have exercised under the same or similar circumstances then and there existing.
13. That the Defendants knew or should have known of the dangerous condition present on the premises which they owned, possessed, exercised dominion over and/or controlled; that their business invitees were to be in the vicinity of this hazardous condition; that the condition was likely to cause injury; and that the expense of remedying the situation was slight compared to the magnitude of the risk of injury.
14. Which negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants directly and proximately caused the injuries and losses of the Plaintiff as is hereafter set forth.

DAMAGES

15. The Plaintiff hereby repeats and realleges the allegations contained in each and every paragraph above as if repeated verbatim herein.
16. That, as the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful, and wanton acts and/or omissions of the Defendants, the Plaintiff:

- (a) Fell on her right side and fractured her hip;
 - (b) Was severely, seriously, painfully and permanently injured;
 - (c) Was subjected to surgery, and to the administration of strong and potent drugs and medications;
 - (d) Suffered extreme, painful, and dangerous injuries that will have a permanent adverse effect;
 - (e) Has incurred and will incur in the future, substantial medical and doctor bills due to her injuries;
 - (f) Was subjected to extreme pain, mental anguish, emotional distress, suffering and discomfort over a long period of time; and
 - (g) Has been and will be prevented from attending to her usual and ordinary household duties.
17. All to her damages, both actual and punitive, in an amount to be determined by the trier of facts.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in an amount of actual and punitive damages, if so awarded by a jury, that will fully, fairly and justly compensate her for the injuries sustained and for such other and further relief as may be deemed appropriate by the jury.

SANYAL LAW FIRM, LLC

By:

s/ Ravi C. Sanyal

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Attorneys for Plaintiff

Charleston, South Carolina
This 7th day of April, 2023

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following:

1. That this Honorable Court grants all of Plaintiff's Causes of Action;
2. Deny Defendants' Answer and Counterclaims
3. Compensation for Actual, Incidental and Consequential damages, and Punitive damages;
4. Attorney's fees and costs of filing this action;
5. Punitive damages; and
6. Any other relief that this Honorable Court deems fair and just.

SANYAL LAW FIRM, LLC

Respectfully submitted,

By:

s/ Ravi C. Sanyal

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Attorneys for Plaintiff

Charleston, South Carolina
This 7th day of April 2023